

AGENDA

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Friday, April 29, 2016 - 10:00 a.m. - 3:00 p.m.

Fort McDowell Yavapai Nation Tribal Court

Fort McDowell, AZ

- I. Registration - (Beginning at 9:30 A.M.)**
- II. Call to Order and Greeting**
- III. Participant Introductions**
- IV. Member Additions to Agenda**
- V. Approval of Minutes**
- VI. Meeting Business**
 - A. Child Support Guide Development**
 - a. Additional Committee Members**
 - b. Preparation of Guide**
 - B. Probation Committee Report**
 - a. N. AZ Community Supervision Summit - May 17, 2016**
 - b. Supervision of State Probationers on Reservations**
 - C. ICWA Committee Report**
 - a. Committee Update**
 - b. ICWA Scenarios Prompting Litigation**

LUNCH

- D. Fort McDowell Yavapai Nation Tribal Court Overview/Tour**
- E. Tribal Order of Protection Update**
- F. Involuntary Commitment Update**
- G. Tribal Judge Opportunity to Attend Arizona Judicial Conference**
- VII. Open Forum for Discussion of Issues of Concern**
- VIII. Next Meeting – September 23, 2016 - Ak-Chin Indian Community Court**
- IX. Adjournment**

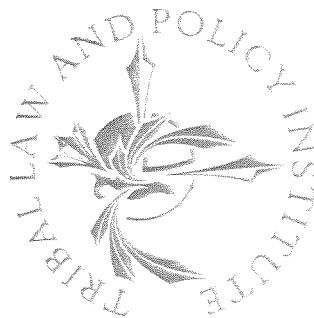
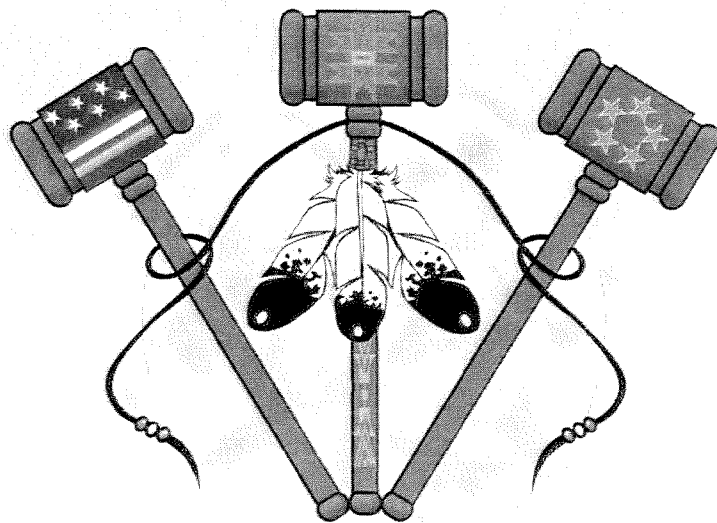
IV. Member Additions to Agenda

Tribal-State Court Forums

Tribal-State Court Forums: An Annotated Directory

Tribal Law and Policy Institute

June 2015



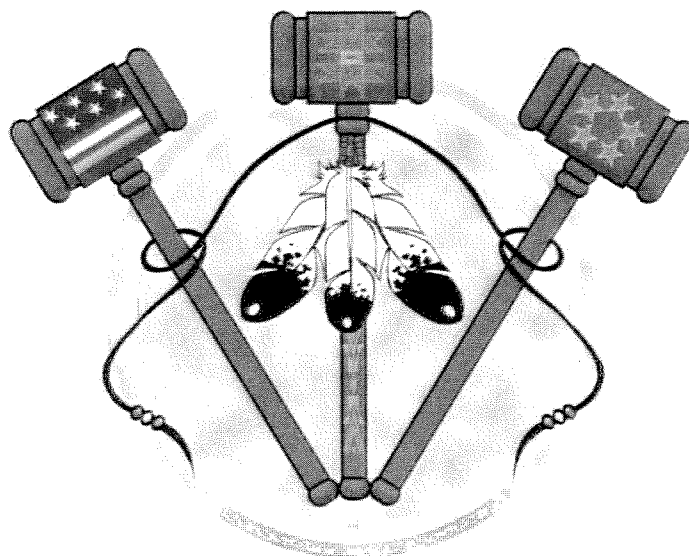
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Tribal Court Clearinghouse: www.tlpi.org

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Tribal Law and Policy Institute
June 2015

Tribal State Court Forums:

An Annotated Directory

June 2015

A product of the

Tribal Law and Policy Institute

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Tribal-State Court Forums: An Annotated
Directory

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Introduction

Tribal and state courts interact across many issues, including child welfare, cross jurisdictional enforcement of court orders, civil commitments, etc. One of the key arenas of interaction with great potential for collaboration are the courts. Tribal and state courts can misunderstand, misinterpret and disagree about issues of great importance to both jurisdictions. However, beginning in the mid 1980s through the efforts of the Conference of Chief Justices, tribal-state court forums began to bridge some of these gaps with judges and court personnel coming together to foster relationships, discuss areas of mutual concern, develop legislative initiatives and to find a common ground (see www.WalkingOnCommonGround.org for detailed background).

Since the 1980s, several tribal-state, and sometimes federal, court forums have emerged; but unfortunately, some have fallen by the wayside, often due to funding constraints or the retirement of key judges/staff that sustained the forum. To explore difficulties in sustainability and to discuss training needs, the Tribal Law and Policy Institute convened a working group meeting of several forums at the 2012 Indian Nations Conference. This provided a rare opportunity for peer to peer training and networking among forums. It became apparent that both existing forums, as well as those that are developing, have a need for information on how other forums are organized, structured, funded and how they problem solve. To that end, we have developed this annotated guide that provides information on the forums that we are aware of, including information on structure, organization, membership and funding. This annotated directory will be updated on an ongoing basis, and it is our hope that many more forums are added to this list. Efforts are currently underway in several states, including Washington and Oregon; subsequent editions of this publication will detail those efforts.

Compiling the annotated directory highlights several themes common to the forums contained within. First, the forums developed as one or two people had a desire to address difficult problems, such as jurisdictional problems, and worked together to find common ground. One of those areas that most forums have focused on is the Indian Child Welfare Act (ICWA) and most forums have worked together to create trainings or materials to assist state courts with ICWA's implementation. Another common area of interest has been the recognition of tribal court orders by state courts and many forums have developed rules or protocols for this. Another common theme is that the forums typically have co-chairs, one from tribal court judges and one from the state court judges participating in the forum. The forums also seek to maintain an equal balance between state and tribal participants, as well as federal participants who participate in several forums. The active forums have instituted regular and consistent meetings, even if it's only one in person meeting a year. These regular meetings ensure the work of the forum moves forward.

Recent law changes impacting tribal criminal jurisdiction, including the Tribal Law and Order Act and the Violence Against Women Reauthorization of 2013, make collaboration all the more

crucial and courts are often at the center of action. As more tribal and state judges and court personnel come together, we hope that these relationships inspire others to use collaboration as a strategy to bridge jurisdictional gaps to improve safety in Indian country.

The following general guidelines can assist tribes and states with making smart choices that have shown to be successful and to avoid common pitfalls.

Tribal/State Court Forum Dos and Don'ts

(Based on the experience of the members of the Arizona Court Forum as reported by the National Center for State Courts, 1992)

Membership

- DO select forum members from diverse perspectives who have demonstrated interest, expertise, or experience in addressing Indian law issues.
- DON'T select forum members based only on their position within the judiciary or elsewhere.

Mutual Respect

- DO acknowledge differences between tribal and state court systems and seek ways of cooperating consistent with those differences.
- DON'T characterize either system as better or worse or more or less sophisticated than the other.

Scope

- DO proceed in phases with predetermined time frames, including a study phase in which issues are identified, before implementing recommendations.
- DON'T devote resources to implementation until a consensus is reached concerning priority issues and recommendations.

Persistence

- DO design a process that invites broad-based participation in identifying issues and making recommendations.
- DON'T be discouraged by lack of participation or lack of progress.

Performance

- DO assign manageable tasks to forum members or subcommittees to be accomplished within established time frames.
- DON'T delay too long before dividing the work of the forum into tasks that can be accomplished within the time frames established.

Solutions

- DO emphasize creative solutions to jurisdictional issues that avoid litigation and are consistent with the rights of the parties, sovereignty, and judicial independence.
- DON'T emphasize jurisdictional limitations.

Communications

- DO emphasize person-to-person communication and education to address jurisdictional issues.
- DON'T seek to address jurisdictional issues solely through large-scale change in the law or legal systems.

Arizona

Federal, State, and Tribal Court Forum

Founded: 1990

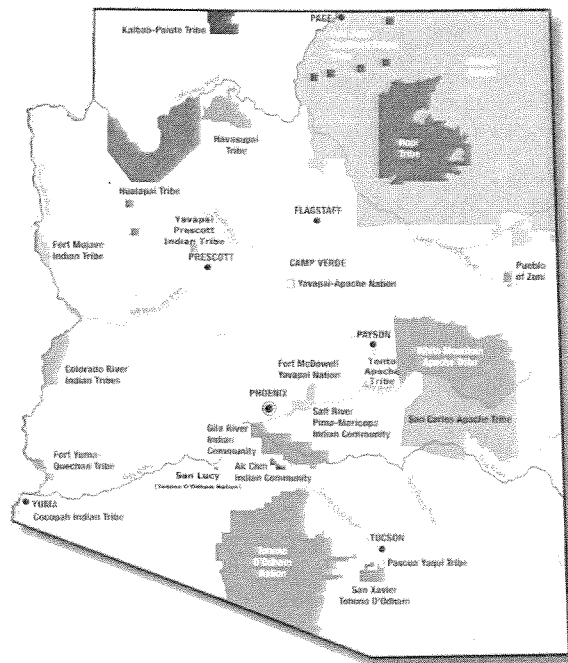
Forum Description:

There are twenty-one federally recognized tribes within Arizona. While not an original Public Law 280 (PL-280) state, Arizona attempted to assume PL-280 regulatory jurisdiction over air and water pollution; in 2003 the U.S. Supreme Court made it clear that PL-280 did not encompass state regulatory jurisdiction of that type.¹ Arizona is no longer attempting to exercise any PL-280 jurisdiction. The Arizona State and Tribal Court Forum formed in 1990, under the Conference of Chief Justices, which recommended an ongoing colloquium. In 1994 the Chief Judges of the U.S. 9th Circuit Court of Appeals and the District Court of Arizona appointed judges to serve in line with the conference recommendation.

The forum meets three times each year and addresses a seemingly limitless set of issues that are brought to the forum by others or raised by members. Historically, the forum has worked on issues such as:

- Orders of protection;
- Enforcement of tribal court involuntary commitment orders;
- Indian law questions on the state bar exam;
- Creating civil remedies;
- Judicial protocol for allocating jurisdiction between state and tribal courts;
- Resolving tribal/state jurisdictional dilemmas;

¹ *Bryan v. Itasca County*, 426 U.S. 373 (1976).



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- Extradition of persons to and from Indian country;
- Qualified domestic relations orders; and
- Rules of procedure for recognition of tribal court judgments.

Arizona Tribal-State Key Accomplishments
<ul style="list-style-type: none">✓ Enforcement of tribal court involuntary commitment orders✓ Indian law question on the state bar examination✓ Extradition statute for persons to and from Indian jurisdiction✓ State rule on certification of questions of law from federal and tribal courts✓ State rule for the recognition of tribal court civil judgements

Members:

The Court Forum consists of four federal members, six state members, at least seven tribal members, one State Bar member, and two public members. The federal members include a judge of the Ninth Circuit Court of Appeals appointed by the Chief Judge of the Circuit, a judge of the District of Arizona appointed by the Chief Judge of the District, the U.S. Attorney or designee, and the Federal Public Defender or designee. The state members include an appellate judge, three trial court judges, and a clerk of the superior court or deputy clerk appointed by the Chief Justice and the Arizona Attorney General or designee. The tribal members include at least seven chief judges or justices or their designees who express interest in Forum membership and who are appointed by the Chief Justice.

Current Members

Hon. Lisa Abrams

Superior Court, Pima County

Hon. William Canby Jr.

U.S. Court of Appeals, Ninth Circuit

Hon. Violet Lui-Frank

Tohono O'odham Nation Justice Center

John Major

Public Member

Hon. Ryan Andrews

Salt River Pima – Maricopa Indian Com.
Center

Hon. Paul Christian

Yavapai-Apache Tribal Court

Hon. Arthur Markham

Yavapai-Prescott Tribal Court

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Hon. Victor Clyde
Chinle Justice Court

Maria Morlacci
Arizona Office of the Attorney General

Hon. Edd Dawson
San Carlos Apache Tribal Court

Jan Morris
Public Member

Hon. Neil Flores
Fort Mojave Tribal Court

Hon. Kerry Passey
Yavapai Nation Tribal Court

Hon. Donna Grimsley
Superior Court, Apache County

Hon. Michala Ruechel
Superior Court, Navajo County

Sue Hall
Clerk of Superior Court, Apache County

Jon Sands
Federal Public Defender

Jeff Harmon
State Bar, Indian Law Section

Hon. Claudette White
Quechan Tribal Court

Hon. James Hopkins
Pascua Yaqui Court of Appeals

Hon. David Widmaier
Pinetop-Lakeside Municipal Court

Hon. Delfred Leslie, Hopi Tribal Court

Hon. Ida Wilber
Hualapai Tribal Court

Hon. Kay Lewis
Havasupai Tribal Court

Hon. Herb Yazzie
Navajo Nation Supreme Court

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Directory

Funding Source:

Staff support for the forum is provided by the Arizona's Administrative Office of the Courts (AOC) while members are responsible for their own travel.

Website:

<http://www.azcourts.gov/stfcf/Home.aspx>

Contact Information:

David Withey
Arizona Supreme Court, AOC
1501 W. Washington
Phoenix, AZ, 85007
E-mail Address: dwithey@courts.az.gov
Phone Number: 602-452-3325

Arizona Authorizing Documents:

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ARIZONA CODE OF JUDICIAL)	Administrative Order
ADMINISTRATION § 1-801:)	No. 2007 - 25
STATE, TRIBAL AND FEDERAL)	(Replacing Administrative
COURT FORUM)	Order No. 2004-36)
)	

The above captioned provision having come before the Arizona Judicial Council on March 6, 2007, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the above captioned provision, attached hereto, is adopted as a section of the Arizona Code of Judicial Administration, replacing Administrative Order No. 2004-36.

Dated this 15th day of March , 2007.

RUTH V. MCGREGOR
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 8: Intergovernmental Relations
Section 1-801: State, Tribal and Federal Court Forum

A. General Purpose. *The State, Tribal and Federal Court Forum (STFCF) is established to create an ongoing colloquium between state, tribal and federal judiciaries regarding the interaction of state, tribal and federal court jurisdiction in Arizona.*

B. Membership. *STFCF shall include the following members:*

1. *Four federal members, including:*
 - a. *One Ninth Circuit Court of Appeals judge appointed by the chief judge of the circuit;*
 - b. *One District of Arizona judge appointed by the chief judge of the district;*
 - c. *The United States Attorney or designee; and*
 - d. *The Federal Public Defender or designee.*
2. *Eight state members, including:*
 - a. *One appellate judge;*
 - b. *Five trial court judges of general and limited jurisdiction courts;*
 - c. *A clerk of superior court or deputy clerk appointed by the chief justice; and*
 - d. *The attorney general or designee.*
3. *A minimum of eight tribal members appointed by the chief justice; including:*
 - a. *At least eight chief judges, chief justices or designees; and*
 - b. *Any additional chief judges, chief justices or designees who express interest in forum membership.*
4. *One State Bar of Arizona, Indian Law Section member; and*
5. *Two public members.*

C. Term. *State and tribal court members and the public members shall be appointed to a three year term. Members serving due to office held, by appointment of an officer other than the chief justice, or by designation of an officer entitled to membership, shall not have a term.*

D. Responsibilities.

1. *To foster mutual understanding and acceptance by state, tribal and federal judges of the similarities and differences between each other's courts and legal systems, particularly pertaining to the resolution of jurisdictional issues.*

2. *To promote improvement in the quality of justice delivered in the context of the overlapping jurisdiction of state, tribal and federal courts through judicial education, professional court administration, education of attorneys and the public about tribal courts, and the sharing of personnel, facilities and programs, as well as state, tribal and federal funding, as appropriate.*
 3. *To promote respect for and recognition of the judicial proceedings and judgments among the three court systems in order to minimize the need for litigation regarding jurisdictional issues.*
 4. *To increase operational communication, cooperation and coordination among state, tribal and federal courts and other justice agencies in Arizona.*
 5. *To promote legislative, regulatory and court rule changes to further the coordination of and cooperation among the three court systems.*
 6. *Any other duties deemed by a majority of forum members to be in the best interests of state, tribal and federal courts and of the justice system serving the citizens of Arizona affected by the interaction of these three systems.*
- E. Organization.** *The chief justice shall appoint one of the members to chair the forum. The chair shall appoint a member to serve as vice-chair.*

V. Approval of Minutes

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Arizona State Courts Building, Conference Room 119A/B

Draft Minutes of the January 8, 2016 Meeting

Court Forum Members Present:

Hon. Ryan Andrews
Salt River Pima-Maricopa Indian Com. Court

Hon. Delfred Leslie (via telephone)
Hopi Tribal Court

Hon. Brian Burke
Ak-Chin Indian Community Tribal Court

Hon. Jan Morris
Hualapai Tribal Court

Hon. William Canby, Jr
U.S. Court of Appeals, Ninth Circuit

Hon. David Osterfeld
White Tank Justice Court

Hon. Victor J. Clyde
Chinle Justice Court

Hon. Douglas Rayes
U.S. District Court

Hon. Randall Howe
Arizona Court of Appeals, Division I

Hon. Michala Ruechel (via telephone)
Superior Court, Navajo County

Administrative Office of the Courts (AOC) Staff Present:

David Withey

Participants/Visitors Present:

Majorie Eagleman (via telephone)
Hon. Lawrence King
Hon. Allen Sloan
Edd Welsh

Rene White
Dawn Williams (via telephone)
Naomi Yazzie

I. **Registration** - (Began at 9:30 a.m.)

II. **Call to Order and Greeting** - (10 a.m.)

III. **Participant Introductions**

IV. **Member Additions to Agenda**

V. **Approval of Minutes**

Motion: Motion was made and seconded to approve the minutes for August 14, 2015, which was unanimously approved.

VI. Meeting Business

A. Probation Committee Report - Summit Planning

The probation committee is planning a summit on May 17, 2016 for the northcentral and northeastern sectors of the state to include state, tribal, and federal probation, court, and other officials who work with persons on reservations who are subject to community supervision. The purpose of the summit is to promote cooperation and collaboration among officials of the three jurisdictions in order to resolve issues and enhance the effectiveness and efficiency of community supervision in reservation communities. Judge King described a models of cooperation between the courts in La Paz County and the Colorado Indian Tribe. Judge Clyde suggested review of state probation requirements to assure that tribal treatment programs can be used.

B. Restorative Justice in Tribal Courts

Judge Leslie described the traditional Hopi childrearing practices involving family and clan that account for stability in Hopi society. This includes communication of traditional social norms, ceremonies, and discipline by Kachinas, family and clan members to children in groups and individually. This is how Hopis learn to be responsible members of Hopi society. These traditional methods are less prevalent and the tribal court is faced with dealing with the consequences. Tribes should consider how to implement tribal traditions in current justice systems. Veteran's Court may be an avenue for incorporating tribal traditions to address offenses and needs of tribal offenders.

C. Involuntary Commitment Update

David described his conversation with Sheena Yellowhair of Cenpatico concerning the need for more tribal mental health codes and the problem of tribes having to hold persons having a mental health crisis in tribal jail.

D. Tribal Order of Protection Update

The lack of a means to enter tribal orders of protection into state and/or national criminal justice databases where they can be accessed by law enforcement officers responding to domestic violence calls is an ongoing issue. This access is available for state orders due to Arizona law that requires the sheriff to enter and verify state orders. It was noted in discussion this inaccessibility of tribal orders has implications for victim and officer safety and disables enforcement of Brady firearms restrictions with respect to tribal orders. We have communicated this issue to staff at the FBI but have not yet received a response.

E. Child Support Follow-up

Commissioner Harris discussed her work on the format of a comprehensive Arizona Intertribal Child Support Guide and efforts to obtain information to be incorporated in the guide. The Guide is intended for use by persons seeking child support. Limited information about tribal law is available and has been obtained on the Internet. She also developed a series of questions for tribal

courts regarding enforcement of child support that would be incorporated into the Guide. **Action:** Materials will be distributed to tribal judge members of the forum for review and response.

A Child Support Committee to work with Commissioner Harris consisting of Judge Claudette White, Judge Ida Wilbur, and Asst. Attorney General Janet Sell was formed as a result of previous discussions.

Action: Chief Justice Sloan and Judge Andrews indicated they would consider designating a judge to work on this committee.

Forum members also discussed entry of child support orders by a tribal court in the context of a request for an order of protection and enforcement of such an order by a state court.

LUNCH

F. Equitable Treatment of Minority Youth

David Redpath, AOC Juvenile Justice Services Division, described a report of the Commission on Minorities on disproportionate minority contact of the juvenile justice system. The report includes data on Native American youth. This data shows the degree of disproportionate contact but does not indicate why levels of contact occur. Large reduction in number of contacts have occurred since 2002 but the proportion of minority contact has remained similar. Generally Native American youth are not referred into the system more often, of those referred formal action is taken more often, and petitions are dismissed more often than white youth. Native American youth are diverted significantly less often than other youth. Native American youth adjudicated delinquent go to ADJC at the same rate as white youth but are placed on probation at a significantly higher rate than white youth.

G. ICWA Committee Update

Report will be provided at the next meeting.

VII. Open Forum for Discussion of Issues of Concern

Members discussed incorporation of tribal traditions into court processes involving tribal members by use of diversion, specialty courts, and restorative justice programs.

VIII. Next Meeting – April 29, 2016 Meetings – Ak-Chin Indian Community Court (Location subsequently changed to Ft. McDowell Yavapai Nation Tribal Court.)

IX. Adjournment

Meeting adjourned at 2:05 p.m.

VI. Meeting Business
A. Child Support Guide Development

This is a suggested format for child support information. I have specific child support information from the Navajo, Hopi, Quechan, (4) Salt River/Pima/Maricopa Indian Community; (5) Tonoho O'odham (Papago); (6) Pasqua Yaqui using State guidelines) nations.

The Arizona Inter-Tribal Child Support Guide- Outline- January 8, 2016

Introduction and Purpose for Guide

Beginning Information for CS Cases

Identifying Information and Documentation for Child: Name of child; social security #; address; telephone; identification card; certificate of Indian Blood/tribal affiliation(s); Where does child attend school? Does child live with parent or with non-parent supervisory adult?

Identifying Information and Documentation for Father: Name; social security #; address; telephone; driver's license or identification card; certificate of Indian Blood/ tribal affiliation; Employment: Is parent capable of working: Is parent self-employed; What bank records are available? What assets does father own? Has paternity been established?

Identifying Information and Documentation for Mother: Name; social security #; address; telephone; driver's license or identification card; certificate of Indian Blood/ tribal affiliation; Employment; Is parent capable of working: Is parent self-employed; What bank records are available? What assets does mother own?

Does particular tribe participate with IV-D services?

Jurisdiction

What is needed to establish jurisdiction?

Concurrent jurisdiction: Can more than 1 tribe claim jurisdiction over action? Is jurisdiction proper in a civil court in AZ?

How does person requesting CS establish jurisdiction for tribal court?

Is there personal jurisdiction over party who is requested to pay CS?

Are there other existing orders about the family?

Service of Process on Particular Reservations

How to serve on each reservation?

Who Is The Contact Person/Office on Particular Reservation

Need current contact person for the specific reservations with e-mail and phone information.

When May Action Be Brought

Prior to child reaching age 18 v. up to 3 yrs. after child reaches age 18.

Who May Bring Action

Either parent; governmental agency such as IV-D?; other family members who support child? This interfaces with initial question about IV-D services.

Who Is Responsible For Paying Child Support

Is there any presumption involving payor or which parent is most likely to have legal decision making (formerly known as custody)? Does individual tribe presume children belong to a particular parent or clan? Are parents equal? Does it depend on official parenting orders?

Child Support Guidelines

State guidelines; located specific tribal guidelines for (1) Navajo; (2) Hopi; (3) Quechan; (4) Salt River/Pima/Maricopa Indian Community; (5) Tonoho O'odham (Papago); (6) Pasqua Yaqui using State guidelines)

May Non-Cash Resources Be Used For Child Support?

May Court Consider Assets such as land/animals in addition to earnings when calculating child support?

Contribution from Family Members/Clan

Does child care provided by family members and clan members count as a non-cash payment or as time spent with parent from that family/clan?

Deviation from Guidelines?

Circumstances where deviation is allowed- best interest? Agreement of parents? Additional costs for special needs or advanced children?

Must there be a substantial change in circumstances

Unusual opportunities for child- does 1 parent need to pay for trips/ travel arrangements so child can participate in opportunities if parent disagrees with the opportunity- i.e. does not believe the travel is needed or worth the cost?

Income Guidelines

Health Insurance— Private insurance? CHIP, Medicaid, AHCCSS, or through Health Insurance Marketplace? Indian Health Services?

Did parent fill out form for exemption from health care law for having insurance through IHS so as to avoid any penalty for not having medical insurance?

May parents be ordered to provide post high school medical insurance?

Any cultural expectations for particular parent to provide for certain needs???

Military benefits that may be available to parents-?

Per Capita payment to the child- Does this obviate need for CS when child receives a per capita payment from gaming/casinos? Is CS awarded despite per capita payment???

Poverty Levels on individual reservations or among various communities and affect on CS guidelines for individual tribes.

Termination of Child Support

Age of termination- Can parents be required to provide post-high school education? Can child emancipate early if child marries or graduates?

Special Needs children

Modification of Child Support

What is the modification process? How soon after initial award may CS be modified? Is there a mandatory per cent change in amount awarded before can request modification (i.e. 15% change in CS Order or some other number?)

Enforcement of Child Support

Parenting Time Information

Schedule child has with each parent? Does tribe require a formal parenting time schedule?

Deviations (holidays and vacations from regular schedule)

Other Concerns

Automated Data Processing – federal funding is available

Additional Sources for Information

Benefits.gov,(www.nativeonestop.gov) is the official benefits website of the United States, It has information for Native American, and Alaskan Native tribal populations. The portal, provides information about the services that are available through the federal government.

Full Faith and Credit for CS Orders

Will tribe honor other CS Orders under FFCCSOA (Full Faith and Credit Child Support Orders Act § 28 U.S.C. § 1738(B))?

Will Tribe accept a UIFSA transmittal for enforcement purposes? Colorado River Indian Tribe accepts UIFSA

Questions/Issues From Preceding Meeting

Does the Tribe have any Inter-tribal compacts re enforcement of Orders from other Tribes?

- Does the Tribe enforce the Orders of another Tribe via comity?
- Does the Tribe enforce orders from the Superior Court?
- Does the Tribe have forms for requesting child support?
- Does the Tribe have forms for modifying child support?
- Does the Tribe make any distinction between obligors who can't pay (willing but unable) as opposed to those who won't pay (able but unwilling)?
- Does the Tribe have any services available for obligors? Example: job assistance, parenting skills classes, money management/budgeting classes, etc.
- Does the tribal court identify: (1) if the inability to pay is temporary or likely to be permanent; (2) how long since the obligor last paid child support; (3) if there is a disability involved; (4) does the obligor need assistance in qualifying for benefits from tribe/state/federal governments; (5) what benefits are available to obligor; (6) did the court hold an evidentiary hearing about alleged disability; (7) is obligor employed; (8) is obligor under-employed; (9) is obligor a seasonal worker; (10) what efforts has obligor made to change the situation; (11) has obligor requested a modification of Child Support Order; (12) what other resources does obligor have; and (13) is obligor current on other debts and/or taxes?
- What are the consequences of failing to pay child support? Does enforcement deal with current child support, only arrears, or with both?
- Does the tribal court conduct periodic reviews, and if so, what is the process for following up with these cases? What resources does the tribal court have?

Judge Wilber recommended adding the following question: "What are the existing processes in place in the tribal courts regarding child support?"

Committee group members consists of Commissioner Myra Harris, Janet Sell, Judge Claudette White, and Judge Ida Wilber.

Myra requested that anyone interested in joining the Committee to please contact her at mharris@superiorcourt.maricopa.gov.

VI. Meeting Business

B.(a) Northern Arizona State, Tribal, and Federal Community Supervision Summit

Withey, David

From: Lessard, Steve
Sent: Wednesday, April 20, 2016 1:08 PM
To: Alameda, Susan; Douthit, Sarah; Breed, Shanda; Hancock, Paul; Waters, Kathy; Withey, David; 'layellowhair@navajo-nsn.gov'; 'janwmorris@gmail.com'; 'mvaughn@hualapai-nsn.gov'; 'scutchen@kaibabpaiute-nsn.gov'; 'dleslie@hopitelecom.net'; O'CONNELL, PAUL; Matsuda, Bryon; Kelroy, Joseph; Forster, Krista; 'malvirez@hualapai-nsn.gov'; 'Lone Tree, Hope (USAAZ) [Contractor]'; 'ljaramillo@hualapai-nsn.gov'; 'tolvera@coconino.az.gov'; Hall, Arno; 'Mark Stodola (m_stodola@hotmail.com)'; Moreno, Mario; McKone, Rod; 'HYATT, KERRY'; 'margjimulla@gmail.com'; 'jpenn@hopitelecom.net'; 'julie.cooley@wmat.us'; 'justin.bearden@wmat.us'; Kewish, Chad; Wessels, Michelle; Champeau, Amy; Overmyer, Jason; 'Harmon J. Mason'; McKone, Rod; 'Beya Thayer'; 'osegunda@kaibabpaiute-nsn.gov'
Subject: Northern Arizona State, Tribal, and Federal Community Supervision Summit Registration and Summit Agenda
Attachments: 2016 Summit Agenda.docx; Tribal Summit Paper Registration.docx

Northern Arizona State, Tribal, and Federal Community Supervision Summit

REGISTRATION

Please register for this one-day Summit online via Eventbrite:

1. <https://2016aztribalsummit.eventbrite.com>
password – **tribal2016**

OR

2. **Registration Form (attached)**

Registration Closes: May 9, 2016

Date: **May 17, 2016**

Time: **8:00 a.m. – 4:30 p.m.**

Location: **Twin Arrows Navajo Casino Resort**

22181 Resort Boulevard, Flagstaff, Arizona

Hotel: If you need accommodations, please contact Twin Arrows Navajo Casino Resort to reserve a room using the Booking ID 3352. The rate is \$112.00.

PROGRAM DESCRIPTION

At this first ever all-day Summit with federal, state, county and tribal probation staff in Arizona, we will explore the interaction of evidenced-based probation supervision with tribal tradition and culture in order to improve community supervision of shared probationers on and off Arizona reservations. State and Federal probation staff responsible for community supervision in Coconino, Navajo, and Apache counties, and Tribal probation and other staff responsible for supervision on their reservations located in those jurisdictions will discuss public safety as a shared value, restoring harmony, education on Tribal traditions, listening, communicating, information and resource sharing, cross-training, and re-entry. During afternoon Breakout sessions participants will have the opportunity to agree on what is currently working between jurisdictions, what can be improved, how to most effectively communicate, cooperate and collaborate in the future.

Northern Arizona State, Tribal, and Federal Community Supervision Summit

***“Strengthening our Collaboration through Conversations”
“Building Trust through Communication”
May 17, 2016***

Morning Session

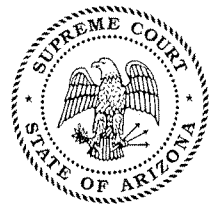
08:00 – 08:30	Continental Breakfast
08:30 – 08:45	Opening/Welcome/Introduction
08:45 – 09:15	Tribal/County Probationer Reflection
09:15 – 10:00	Tribal Presentation
Break (15 min)	
10:15 – 11:30	Tribal Presentation Continued...
11:30 – 12:00	Probation/Parole, Presentation
Buffet Lunch (12:00 – 01:00)	

Afternoon Session

01:00 – 03:30	Breakouts by Tribe/Probation/Parole
Break at 3:30 (15 min)	
03:45 – 04:30	Report-outs from breakout groups
04:30 – 04:40	Closing Comments
Adjourn	



Northern Arizona State, Tribal, and Federal Community Supervision Summit



REGISTRATION FORM

Please complete all fields - failure to complete all fields may result in a processing delay

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ATTENDEE INFORMATION

Last Name	First Name	Title
Tribe or Agency Name	Address	City/Zip
Office Email Address	Office Main Phone #	Contact Phone #

Attendee's Signature

Return completed registration via mail, fax, or email:

Michelle Wessels
Arizona Supreme Court
Judicial Education Center
541 E Van Buren St. Suite B4
Phoenix AZ 85004

Email: mwessels@courts.az.gov
Fax: (602) 452-3004
Phone: (602) 452-3010

Call or email Michelle Wessels if you have any questions or require any special accommodations due to a disability, including auxiliary aids or materials in alternative formats.

VI. Meeting Business
C.(a) ICWA Committee Update

Arizona ICWA Roundtable
November 15, 2013
Improve Your Court and Action Items

Following is flip chart notes taken during the roundtable discussions:

Improve Your Court

1. Use other tribe foster families
2. Remove children issues from court
3. ICWA guide for local court
4. Work with local villages for welfare of children
5. Increase communication with problem solvers
6. Parent rehabilitation program
7. Communication with social workers
8. User friendly court
9. Return children to tribe with healing process
10. Attorneys for parents
11. CASA/GAL for parents
12. Picture of children in court file
13. Support court self determination

Action Items

1. Look at relative placement foster care criteria/standards
2. Collaboration on foster care – improve system
3. Create tribal ambassadors
4. Culturally based child welfare
5. Judges can promote change
6. Collect tribal specific data – Vicki Steinhoff, AZ DES
7. State court accessible – actual notice
8. Deep discussion about placement issues (and reunification)
9. Rules and funding mechanisms create structure through which the county/state and tribes interact
10. Communication between state and tribal judges
11. Actual notice early
12. Compact provides funding that follows child
13. Explore Minnesota model of money following child when jurisdiction is transferred to the tribe
14. Transfer rules that compliment tribal rules
15. Training GAL, P's attorney

AGENDA

Indian Child Welfare Act Committee

Wednesday, January 20, 2016 1:30 – 4:00 pm

Arizona Courts Building, Room 119 A&B

1501 West Washington

Phoenix, AZ 85007

ICWA Members

I. Call to Order and Greeting – Hon. Kami Hart

II. Introductions by Members and Participants

III. Committee Business

a. County Tribe Cases – Dawn Williams

b. ICWA Guide Feedback –David Withey

c. Subcommittee Delinquency – Rene

d. Education update – Victor

Basic ICWA 101, Barbara Atwood or Dawn Williams

e. Oversight Committee – Resources what do we want and need?

f. Michelle Sixkiller – Expanded DCS, Tribal Social Work update (Judge Quigley)

g. Social Services Members – Who's should we add to committee.

IV. Open Forum

V. Future Meeting(s)

Please mark your calendars for future meetings for 2016. From 1:30 pm -4:00 pm.

- April 20 ,2016**
- July 20, 2016**
- October 19, 2016**
- December ? 2016 (Revisit)**

VI. VI. Adjournment

VI. Meeting Business
C.(b) ICWA Scenarios Prompting Litigation

Dominguez, Brenda

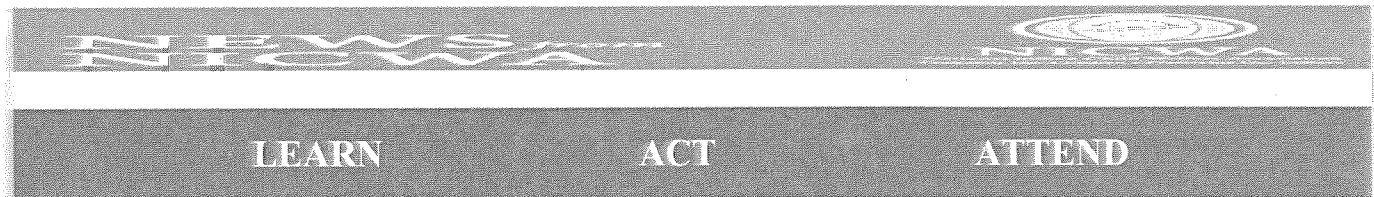
To: Withey, David
Subject: RE: NICWA Calls for Informed Response to California ICWA Case

From: National Indian Child Welfare Association [<mailto:nicole@nicwa.org>]

Sent: Monday, March 21, 2016 5:33 AM

To: Withey, David <DWithey@courts.az.gov>

Subject: NICWA Calls for Informed Response to California ICWA Case



March 21, 2016

NICWA Calls for Informed Response to California ICWA Case

We are disturbed by this weekend's flurry of negative media attention regarding the attempted reunification of a child with her family in Utah. In this contentious custody case, there have never been any surprises as far as what the law required. The foster family was well aware *years ago* this girl is an Indian child, whose case is subject to the requirements of the Indian Child Welfare Act (ICWA)(1), and who has relatives who were willing to raise her if reunification with her father was unsuccessful(2).

In fact, the only surprising turn of events is the lengths the foster family has gone to, under the advice of an attorney with a long history of trying to overturn ICWA, to drag out litigation as long as possible, creating instability for the child in question. That the foster family now argues bonding and attachment should supersede all else despite testimony of those closest to her case(3), seems like a long-term, calculated legal strategy based on the simple fact that the law was *always* clear(4), they understood it(5), but just chose not to abide by it(6).

The purpose of foster care is to provide *temporary* care for children while families get services and support to reunite with their children, not to fast-track the creation of new families when there is extended family available who want to care for the child. The temporary nature of these relationships is also the reason we view those who serve as foster parents as selfless and nurturing individuals. Reunification and placement with extended family whenever possible is best practice for *all* children(7), not just Native American.

We call on the media to provide balanced reporting and to ask vital questions regarding these facts before inflaming the public and subjecting the privacy and future well-being of a little girl to national debate.

References

1. "On August 30, 2011, the court found that the ICWA applies and the matter was transferred to a specialized department for the ICWA cases..." (Cited [here](#), p. 9.)
 2. "At some point after father's reunification efforts failed, the [foster family] decided they wanted to adopt A. They discussed the issue with the Department social worker, who advised them that the tribe had selected the [relative family] as the planned adoptive placement." (Cited [here](#), p. 7.)
 3. "A's ability to re-attach to a new caretaker is stronger because of the stability that the [foster family] has provided for her." (Cited [here](#), p. 6) and "Javier did not believe A would suffer any severe trauma because she sees the [relative family] as family and would not feel as if she is being sent to live with strangers." (Cited [here](#), p. 11.)
 4. "The Department consistently reminded the [foster family] that A is an Indian child subject to the ICWA placement preferences." (Cited [here](#), p. 7.)
 5. "The [foster family] was aware that A was an Indian child and her placement was subject to the ICWA." (Cited [here](#), p. 5.)
 6. "The [relative family] first visited A shortly after the court terminated father's reunification services. Since then, they video chat with A about twice a week and have had multiple in-person visits in Los Angeles. The [foster family] refer[s] to the [relative family] as family from Utah...The participants agreed on a transition plan that involved a relatively short transition, with both families meeting for breakfast or at a park, explaining to A that she is going to with the [relative family], who are family who love A very much and will take good care of her. The [foster family] would reassure A that they love her and will always be a part of her family." (Cited [here](#), p. 8.)
 7. "The benefits of extended family placements are not limited to biological relatives, but extend to placements within a child's larger community. Child welfare agencies consider "members of [a child's] tribes or clans, godparents, stepparents, or other adults who have a kinship bond with the child" as potential resources for kinship care." (Cited [here](#), pp. 8-10.)
-

National Indian Child Welfare Association, 5100 SW Macadam Ave.,
Suite 300, Portland, OR 97239

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CARTER V. WASHBURN
(Claims Re ICWA filed by Goldwater Institute in U.S. District Court - AZ)

FACTS COMMON TO ALL CLAIMS

I. Baby Girl A.D.

21. DCS took baby girl A.D. into *protective custody at birth* as she was severely drug-exposed due to her biological mother's ingestion of several controlled substances, and placed her with S.H. and J.H. They have taken care of baby girl A.D. ever since, and although she has some developmental delays due to her exposure to controlled substances, she has shown remarkable recovery from the deleterious effects of second-hand addiction under the loving care of S.H. and J.H.

22. A.D.'s biological mother named two possible birth fathers for baby girl A.D. Paternity tests on both ruled out the possibility that they were A.D.'s birth fathers. Consequently, the *state court severed parental rights* of the birth mother and the absent birth father.

23. S.H. and J.H., as *foster parents, have taken care of baby girl A.D. since birth.*

S.H. and J.H., along with their adopted son who has Indian ancestry, are the only family that baby girl A.D. has ever known. The tribe sought in state court a transfer of the case to tribal court. *The state juvenile court denied the tribe's motion to transfer jurisdiction to tribal court and the tribe appealed.* That appeal is now pending in the Arizona Court of Appeals Case No. JV16-0038. If the appellate court reverses the state trial court's decision and their case is transferred to tribal court, it would force A.D., S.H. and J.H., who do not have any contact with the tribal forum, to submit to that forum's jurisdiction over them. Such transfer and the resulting exercise of jurisdiction, if successful, would be solely based on baby girl A.D.'s race.

24. But for ICWA, A.D. would likely have been cleared for adoption by S.H. and J.H. If they are awarded adoption, they are willing to provide and encourage appropriate visitation and cultural acclimatization opportunities to A.D. DCS has and continues to follow, implement, and support the position that ICWA and the BIA Guidelines control all aspects of the state court child custody proceeding of A.D., S.H., and J.H., including but not limited to the provisions challenged here. In A.D.'s child custody proceeding, all actions were taken and decisions reached because of A.D., S.H., and J.H.'s race.

II. Baby Boy C.C.

25. DCS took baby boy C.C. into *protective custody when he was less than one year old* when his biological mother was convicted of a non-drug related felony. His birth father is unknown. The birth mother is on record saying she supports baby boy C.C.'s adoption by M.C. and K.C.

26. The Navajo Nation repeatedly proposed alternative ICWA-compliant placements, all of which turned out to be inappropriate for placement of baby boy C.C. Baby boy C.C.'s *extended family members expressly declined to have him placed with them.* Other ICWA-compliant placements the tribe proposed also declined to have baby boy C.C.

placed with them. The *tribe repeatedly asked for additional opportunities from state court to find other ICWA-compliant placements*. Consequently baby boy C.C. *continuously remained in foster care with M.C. and K.C. for four years*. M.C. and K.C. were not able to file a petition for adoption until the state court declared that baby boy C.C. is available for adoption and that there was good cause to deviate from ICWA's adoption placement preferences.

III. Baby Girl L.G. and Baby Boy C.R.

32. L.G. and C.R. are siblings who have the same birth mother but different birth fathers. L.G. was born in August, 2012, C.R. in August, 2014. During C.R.'s pregnancy, the birth mother tested positive for several controlled substances. Baby boy C.R. was born nine weeks premature, was drug-exposed when born, and spent three weeks in a ventilator. He is determined to be medically fragile. In or about August 2014, DCS took baby girl L.G. and baby boy C.R. into protective custody and placed the siblings in the care of P.R. and K.R. Thus, *DCS took L.G. into protective custody when she was about 2 years old; DCS took C.R. into protective custody at birth*. P.R. and K.R. is the only family that baby boy C.R. has ever known; L.G., on information and belief, lived with her birth mother before she was placed in the care of P.R. and K.R. If they are awarded adoption, P.R. and K.R. are willing to provide and encourage appropriate visitation and cultural acclimatization opportunities to L.G. and C.R.

33. Both L.G. and C.R.'s birth fathers are known. On information and belief, both are in federal prison on conviction for violent felonies. L.G. and C.R.'s birth mother and maternal grandmother were arrested on charges of shoplifting. On information and belief, the maternal grandmother was given a two-year prison sentence and the birthmother is currently on probation.

34. L.G. and C.R.'s birth mother, on information and belief, is a member of the Gila River Indian Community with 25% Indian blood.

35. After L.G. and C.R. were placed in the foster care of P.R. and K.R., L.G.'s birth father, on information and belief, tried to obtain membership in the Pascua Yaqui Tribe, a federally-recognized tribe, but was unable to obtain membership. Consequently, L.G. is not eligible for membership in, nor is she a child of a member of, the Pascua Yaqui Tribe. L.G. is also not eligible for membership in, nor is she a member of, the Gila River Indian Community.

36. C.R.'s birth mother and birth father are members of the Gila River Indian Community. *C.R. is eligible for membership in, and is a child of a member of, the Gila River Indian Community*.

37. *Initially, the case management plan for L.G. and C.R. was reunification* with their birth mother. Due to C.R.'s low birth weight and medical complications due to inutero exposure to controlled substances, DCS consented to, and the state court authorized, one weekly 4-hour-long visit with the birth mother that is supervised by DCS employees. In September 2015, the state court properly having jurisdiction over the child custody proceeding, changed the case management plan to severance. *The parental rights of L.G. and C.R.'s birth parents have not been terminated*.

38. Foster parents P.R. and K.R. are not party intervenors in the state child custody proceeding of L.G. and C.R. Plaintiffs L.G., C.R., K.R. and P.R. do not have any contacts or ties with any tribal forum.

39. ***The Gila River Indian Community has and will continue to propose alternative ICWA-compliant homes for C.R. in the consolidated child custody proceeding of L.G. and C.R.*** for the sole purpose of ensuring that C.R.'s child custody proceeding is subject to ICWA and the BIA Guidelines. DCS has and continues to follow, implement, and support the position that ICWA and the BIA Guidelines control all aspects of the state court child custody proceeding of C.R., including but not limited to the provisions challenged here.

40. L.G. has Indian ancestry but is not an "Indian child" within the meaning of ICWA. However, she is discriminated against in her consolidated child custody proceeding because her half-sibling, C.R., is an "Indian child" within the meaning of ICWA. L.G. has known C.R. since birth, both share a strong sibling bond, and both consider K.R. and P.R. as *de facto* and psychological parents. Both call K.R. and P.R. their "mommy" and "daddy."

41. Arizona state policy, mandated by state law, is to place well-bonded siblings with the same foster and adoptive parents. *See, e.g.*, A.R.S. § 8-513(D). But for ICWA and the federal and state statutes and Guidelines that implement it, L.G. and C.R. would be placed together due to their bonding and attachment, pursuant to state law.

42. The relevant state court properly having jurisdiction over the matter has not declared L.G. and C.R. as available for adoption. ***L.G. and C.R. have continuously remained in foster care with P.R. and K.R. for about one year and six months.*** P.R. and K.R. cannot file a petition for adoption until the state court declares that L.G. and C.R. are available for adoption and that there is good cause to deviate from ICWA's adoption placement preferences.

43. Due to the application of ICWA, L.G. and C.R. have been languishing in foster care for more than one and a half years. But for ICWA, they would likely have been cleared for adoption by P.R. and K.R.

VI. Meeting Business
E. Involuntary Commitment Update

Withey, David

To: Withey, David
Subject: FW: AZ Tribal visit - Orders of Protection

From: Lough, Kimberly K. (CJIS) (FBI) [mailto:Kimberly.Lough@ic.fbi.gov]
Sent: Thursday, April 28, 2016 11:08 AM
To: Withey, David <DWithey@courts.az.gov>
Subject: Re: AZ Tribal visit - Orders of Protection

Have you addressed before now the need for tribes to enter OPs into NCIC? *This is and continues to be an issue for various tribal agencies.*

If so, what was the outcome? *Outcome is different for different tribes. Solutions are dependent on the CJIS Systems Agency (CSA) they work through.*

What tribes are currently entering OPs into NCIC? *Approximately 31 tribes are currently entering OPs into NCIC with a tribal designation. Some tribes may have their orders entered but under an Originating Agency Identifier (ORI) of a servicing agency (state Police Department/Sheriff's Office) and I am unable to determine if that is the case.*

If not, is it possible for a tribe to enter OPs into NCIC? *Yes, it is possible with authorized access.*

If so, what qualifications and steps are required for a tribe to be authorized to enter OPs into NCIC? *A connection to CJIS Division systems (NCIC) must be established through an approved CSA. Tribal agencies either enter through a state CSA or the Department of Justice.*

What personal information and order content is required for a tribe to enter OPs into NCIC? *The criteria for entry is the same for tribes as it is for all other submitting agencies:*

1: Protection order entries into NCIC:

- a) Must be supported by an electronic or hard copy order*
- b) Must be issued by a civil or criminal court for the purpose of preventing violent or threatening acts to another person in response to a complaint*
- c) Could include any support (child custody, etc.) issued as part of a protection order authorizing the issuance of protection orders for the protection of domestic violence, etc.*

2: Reasonable notice and opportunity to be heard must be given. For ex parte orders, notice and opportunity to be heard must be provided within the time required by state, local, or tribal law. These ex partes are entered as Temporary Orders.

Mandatory fields for entry into NCIC include:

Originating Agency identifier

Name

Sex

Race

Expiration Date

Protection Order Conditions

Issue Date

And at least one of the following numeric identifiers:

Date of Birth

FBI Number

Miscellaneous Number

Social Security Number

Operators License Number (Set)

License plate Number (Set)

VIN (Set)

Protected Persons Name (Set)

What availability to respond to inquiries is needed regarding OPs? NCIC Hit confirmation requirements must be met. This includes having an agency available to respond on behalf of records submitted by a given agency 24/7. If an agency does not have the resources available 24/7, they may enter into an agreement with another agency to be contacted on their behalf (through consultation with their CSA). Contact information for this agency would then be entered into the record submission.

What office or person should a tribe contact to be authorized to enter OPs onto NCIC? In order to establish an ORI, a request (from the appropriate CSO) may be sent to the FBI via ori@leo.gov.

Is there an option for a tribal court to submit OPs to some federal entity to be entered into NCIC? If a federal agency and your tribe enter into a servicing or holder of the record agreement, and record responsibilities are determined for each agency, yes, a federal agency can service a tribal agency for entry of OPs.

Thank you,

Kim

Kimberly Lough
CJIS Tribal Liaison
Partner Relations and Outreach Unit
Law Enforcement Support Section
FBI CJIS Division
304-625-3855

kimberly.lough@ic.fbi.gov